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The defendants were an English company and the contract was made in England. Subsequent to the making of the contract the Spanish government issued a decree fixing the freight rate at a much lower price than that stipulated in the contract. The cargo was delivered in Barcelona, but the defendants refused to pay more than the legal rate. *Held*, that the plaintiff cannot recover. *Ralli Bros. v. Compañía Naviera Sota y Aznar*, [1920] 2 K. B. 287.

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 319.

CONTRACTS — DIVISIBLE CONTRACTS — BUYER'S FAILURE TO PAY AS EXCUSE FOR SELLER'S NON-PERFORMANCE. — The plaintiff contracted to deliver goods to the defendant, on 30 days' credit, in certain instalments, January, February, and "after March 1st." He shipped none until February and made intermittent partial deliveries until June. The defendant accepted all partial deliveries, paying for the first two only and finally refusing to pay anything further unless the plaintiff recognize his claim for damages and give assurance of future shipments. The plaintiff "rescinded" the contract and sued for the price of the goods accepted. The defendant admitted this liability but counterclaimed for damages for the plaintiff's failure to deliver goods as per contract. *Held*, that the counterclaim for goods due before "rescission" be allowed. *Goodyear Tire & R. Co. v. Vulcanized P. Co.*, 228 N. Y. 118, 126 N. E. 711.

A continued nonpayment by the buyer under an instalment contract, constituting a material breach, justifies the seller's refusal to perform further. *Kokomo Strawboard Co. v. Inman*, 134 N. Y. 92, 31 N. E. 248; *Jensen v. Goss*, 28 Cal. App. Dec. 135, 179 Pac. 225. It is immaterial that the seller owes an equivalent or greater amount of damages for prior breach on his part. *J. K. Armsby Co. v. Grays Harbor Commercial Co.*, 62 Ore. 173, 123 Pac. 32; *Standard Coal Co. v. Eclipse Coal Co.*, 102 S. E. 137 (Ga.). *Contra*, *Sperry, etc. Co. v. O'Neill-Adams Co.*, 185 Fed. 231. See 2 WILLISTON, CONTRACTS, §§ 859, 867. Moreover a refusal to pay except on some condition which the buyer has no right to impose has the same effect. *Stephenson v. Cady*, 117 Mass. 6; *Munroe v. Trenton, etc. Co.*, 206 Fed. 456. But see *Hjorth v. Albert Lea Mach. Co.*, 172 N. W. 488 (Minn.). The demand that the seller recognize the buyer's claim for damages is such an unjustifiable condition. *Harber Bros. Co. v. Moffat Cycle Co.*, 151 Ill. 84, 37 N. E. 676; *Nat'l Contracting Co. v. Vulcanite Portland Cement Co.*, 192 Mass. 247, 78 N. E. 414. The buyer's conduct in the principal case thus justified the seller's absolute refusal to proceed. But the failure to deliver the January and February instalments preceded any breach by the buyer who has therefore a right to damages. This is not waived by mere acceptance of the partial, late deliveries. *Hall v. New Hartford Canning Co.*, 153 App. Div. 562, 138 N. Y. Supp. 866; *Wisconsin Lumber Co. v. Pacific Tank Co.*, 76 Wash. 452, 136 Pac. 691. But see *Mason v. Valentine Co.*, 180 App. Div. 823, 168 N. Y. Supp. 159. Thus far the case may be supported. The first default in payment by the buyer, however, gave the seller the right to suspend further deliveries. *Raabe v. Squier*, 148 N. Y. 81, 42 N. E. 516; *Ackerman v. Santa Rosa-Vallejo Tanning Co.*, 257 Fed. 369. Hence the reasoning of the court in allowing damages for the seller's defective performance between this time and the misnamed "rescission" is unacceptable, contrary to authority, and to prior New York decisions. *Gardner v. Clark*, 21 N. Y. 399; *American Broom & Brush Co. v. Addikes*, 19 Misc. 36, 42 N. Y. Supp. 871.

CORPORATIONS — STOCKHOLDERS — CONSTRUCTION OF STATUTE INVOLVING LIABILITY OF STOCKHOLDERS FOR TORTS. — A statute provided that a stockholder should be personally liable to the extent of the amount unpaid on his stock for the "debts" of a corporation. 1919 SO. DAK. REV. CODE, § 8779.